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No. 71-1088

In the Supreme Court of the United States

OCTOBER TERM, 1971

GUADALUPE M. MORADO, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D. C. 20530.

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After a jury trial in the United States District Court for the Southern District of Texas, petitioners were convicted of having conspired to dilute the May 1970 primary election vote in Starr County, Texas, in violation of 18 U.S.C. 241. The court of appeals affirmed the convictions of six defendants and reversed the convictions of defendants Alaniz and Villarreal (Pet. App. A).[1]

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[1] Despite their lack of standing, Alaniz and Villarreal join in this petition for a writ of certiorari (Pet. 3).

The sole question raised by petitioners is whether their conviction under 18 U.S.C. 241 can be sustained without specific proof that their vote-fraud conspiracy had as its object vote dilution with regard to federal candidates (Pet. 2). It is well settled that the Constitution protects the right of citizens to vote in state as well as federal elections. *Reynolds* v. *Sims*, 377 U.S. 533, 554-555. In protecting rights secured by the Constitution, 18 U.S.C. 241 makes no distinction between a conspiracy to dilute votes for federal candidates and a conspiracy to dilute votes for state or local candidates. On the contrary, that section (set out at Pet. App. A2), *inter alia*, protects against a conspiracy to oppress "any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution * * *." Evidence at trial revealed that petitioners conspired to cause a number of improperly delivered, improperly returned, and improperly marked absentee ballots, to be processed in the May 1970 Texas primary, in which both federal and local candidates were to be elected. Since petitioners were charged with conspiracy to interfere with that primary election and since the indictment (Pet. App. D) was not limited to vote dilution of federal candidates,[2] there was no need to prove

[2] The indictment consisted of a description of the primary involved followed by one count charging a general conspiracy. The description stated that the primary election was held for the purpose of electing, among other officials, Democratic and Republican candidates for United States Senator and for Representative from the Fifteenth Congressional District of Texas. Count I alleged that petitioners con-

that the specific object of the conspiracy was to interfere with the federal vote.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

APRIL 1972.

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spired to injure qualified voters in the free exercise of certain rights secured by the Constitution, particularly the right to cast a vote for candidates for federal offices. The count also charged that defendants did certain acts with the intent that illegal ballots be counted, thereby impairing the value of votes legally cast (Pet. App. 19-21).

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